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## **FINAL ENVIRONMENTAL ASSESSMENT**

# **MCINTOSH COVE SUBDIVISION WATER USE FACILITIES**

**Chatuge Reservoir, Clay County, North Carolina**

TENNESSEE VALLEY AUTHORITY

SEPTEMBER 2005

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#### **The Proposed Decision and Need**

John D. Harrison, Jr., is developing a privately-owned subdivision called McIntosh Cove Subdivision and has requested approval under Section 26a of the TVA Act for individual water use facilities for 17 lakefront lots and a 30 slip community facility for backlying lots on Chatuge Reservoir at Sneaking Creek Mile 1.0R (see Figures 1-3). TVA proposes to grant approval of the Section 26a application for the one community and 17 individual water use facilities.

#### **Public Participation**

On August 15, 2005, the draft environmental assessment (EA) was posted on the TVA Environmental Reports website and distributed to the following federal and state agencies for review and comment; the U.S. Fish and Wildlife Service, the North Carolina State Clearinghouse, the U.S. Army Corps of Engineers (Wilmington, North Carolina), the North Carolina Division of Archives and History, the Eastern Band of Cherokee Indians, the Cherokee Nation, and the United Keetoowah Band. The North Carolina State Historic Preservation Office and the Eastern Band of Cherokee Indians are in agreement with the attached Memorandum of Agreement (MOA).

#### **Alternatives and Comparison**

Under the action alternative, the applicant has proposed a multi-slip facility which would be located away from the main channel in an embayment and would include 30 floating, covered boat slips. The boat slips would be 196 feet long by 60 feet wide and connected to the shoreline by a 40 foot long by 4 foot wide walkway. The facility would extend approximately 234 feet into the reservoir from the normal summer pool elevation of 1926 feet. Each of the proposed private water use facilities would be a double slip structure that is riprapped for shoreline erosion control. An archeological site would be disturbed by construction of the proposed community facility and one adjacent individual facility. No other environmental resources would be adversely affected.

Under the No Action Alternative, TVA would not approve the requested water use facilities. However, the subdivision development would still be completed and the archeological site could still be potentially affected by upland activities on this privately-owned land.

## Affected Environment and Evaluation of Impacts

### Site Description

The site for McIntosh Cove Subdivision is approximately 52 acres, and is located on the right bank of Sneaking Creek at creek mile 1.0 on Chatuge Reservoir. The shoreline fronting this subdivision is flowage easement land which is privately owned. TVA has purchased the right to flood and/or limit structures to contour elevation 1933 feet at mean sea level. This land was never purchased by TVA and may include, but is not limited to, residential, industrial, commercial, or agricultural land. This land, lying below the 500-year flood elevation, is subject to TVA's 26a approvals for structures. The privately-owned 52-acre tract is predominantly gently sloping with a southeast aspect. While the tract borders the lakeshore, it would be classified as upland, and historically has been used as livestock pasture. Review of TVA's Natural Heritage Database revealed two listed species in the vicinity. The Green Pitcher Plant, *Sarracenia oreophila*, is both federally and state listed. The nearest known population of this plant occurs across the embayment, approximately 0.42 miles from the project area. The property where the plant occurs is lower in elevation with a much gentler slope, allowing for the correct hydrologic conditions (or a "wetland-type" habitat) which the plant requires. This is not the condition found on the subject tract, where elevations increase quickly from the shoreline, resulting in dryer soil conditions which cannot support the Green Pitcher Plant. It has also been determined that the proposed action would not have an affect on the known population across the embayment. This is due to the fact that construction and operation of the multi-slip unit and increased boat traffic would not alter the topography or change the hydrology where the plant population exists. The second listed species in the vicinity is the Eastern hellbender, *Cryptobranchus alleganiensis*, (state-listed as rare), which requires rocky stream bottoms with moving water. This habitat does not occur within the vicinity of the project area.

### Impacts Evaluated

The project was evaluated for potential impacts to listed threatened and endangered species, floodplains, surface water, aquatic habitat, and wetlands. Under Executive Order 11988, the project would be considered a repetitive action in the floodplain that would not result in adverse impacts. No listed threatened or endangered species or the unique or important habitats of such species, including the Green Pitcher Plant and the Eastern Hellbender, would be affected by the proposed action. There are some species of wetland vegetation on some portions of the shoreline; however, the soils lack the wetland indicators necessary for this portion of the shoreline to be characterized as a wetland. Impacts to surface water and the aquatic environment resulting from the proposed activities would be insignificant with the implementation of Best Management Practices (BMPs) contained in TVA's General and Standard Conditions for Section 26a and land use actions (General Condition 9 and Standard Conditions 3c, 6a, 6d, 6e, and 6i).

An archeological site (31CY293) that is located on Lot 7 and the Common Lot and is potentially eligible for listing in the National Register of Historic Places [NRHP]), would be adversely affected by the proposed activities. This site is associated with a Cherokee homestead dating to the Pre-Removal Period (ca. 1800-1838 A.D.). On July 28 and 29, 2005, TVA conducted a Phase II archaeological evaluation of this site. The site is considered eligible for listing in the NRHP. Because the site cannot be avoided, TVA proposes to mitigate this adverse effect by conducting a Phase III data recovery excavation. A MOA that addresses the mitigation of these adverse effects has been

finalized with the North Carolina State Historic Preservation Officer (SHPO) and federally recognized Cherokee tribal governments (see attached). Finalization of the MOA signifies TVA's compliance with Section 106 of the National Historic Preservation Act.

### **Mitigation Measures**

TVA's General and Standard Conditions for BMPs for erosion and sediment control (General Condition 9 and Standard Conditions 3c, 6a, 6d, 6e, and 6i) would apply to the Section 26a approval for this project. No significant adverse effects are expected to occur from the project provided these measures are implemented during construction. These conditions will also be listed as part of the Section 26a approval. Under Section 106 of the National Historic Preservation Act, it has been determined that archaeological site 31CY293 is eligible for listing on the NRHP. Because this action would cause an adverse effect on this historic site, TVA proposes, in an MOA with the SHPO and other parties, to resolve this adverse effect by conducting a Phase III data recovery excavation.

### **Preferred Alternative**

TVA's preferred alternative is to approve the proposed action including measures to mitigate adverse impacts to a potentially eligible historic property.

### **TVA Preparers**

Kemmy Garrett, Land Use Specialist  
Martin B. High, Forester  
Danny Olinger, Archeologist  
Helen Rucker, Senior NEPA Specialist

### **Agencies and Others Consulted**

U.S. Army Corps of Engineers  
U.S. Fish and Wildlife Service  
North Carolina State Clearing House  
North Carolina Division of Archives and History  
Cherokee Nation of Oklahoma  
Eastern Band of Cherokee Indians  
United Keetowah Band

### **Attachment**

Memorandum of Agreement

### **Figures**

Figure 1. Vicinity Map

Figure 2. Shoreline Fronting McIntosh Subdivision

Figure 3. Picture of Portion of Proposed Project

**Memorandum of Agreement  
Pursuant to 36 CFR Part 800.6**

**WHEREAS**, the Tennessee Valley Authority (TVA) proposes to issue permits for private water use facilities (the Undertaking) in the McIntosh Cove subdivision, Chatuge Reservoir, Clay County, North Carolina, and

**WHEREAS**, TVA, in consultation with the North Carolina State Historic Preservation Officer (SHPO), finds that the Undertaking would have an adverse effect on archaeological site 31CY293, a property eligible for listing in the National Register of Historic Places, and

**WHEREAS**, alternative locations for the proposed facilities have been considered and found to be unacceptable for the proposed use, and

**WHEREAS**, the permit applicant, Mr. John D. Harrison (the Applicant) has participated in the consultation, and

**WHEREAS**, site 31CY293 is a property of cultural significance to the Cherokee people, and

**WHEREAS**, the Eastern Band of Cherokee Indians, the Cherokee Nation of Oklahoma, and the United Keetoowah Band have participated in the consultation and have been invited to participate in this agreement,

**NOW THEREFORE**, TVA, the North Carolina SHPO, and the Applicant agree that the Undertaking shall be implemented in accordance with the following stipulations to satisfy TVA's responsibilities pursuant to Section 106 of the National Historic Preservation Act (16 U.S.C. 470f). The TVA Federal Preservation Officer, or the designee thereof, shall act for TVA in all matters concerning the administration of this agreement.

**Stipulations**

TVA will ensure that the following stipulations are carried out:

**1. Preliminary Investigations**

Additional evaluation of site 31CY293 will be conducted to determine whether cultural contexts are present that would provide significant information regarding the site's occupation during the Cherokee Removal Era. Evaluation methods may include mechanical removal of the plow disturbed top soil and shovel skimming below the summer pool elevation of the reservoir to identify cultural features.

## **2. Treatment**

The adverse effect on site 31CY293 will be treated by data recovery excavations of significant cultural contexts. Such data recovery excavations shall be conducted in accordance with the Secretary of the Interior's Standards and Guidelines for Identification (48 FR44720-23) and "Guidelines for Preparation of Archaeological Survey Reports in North Carolina, North Carolina Office of State Archaeology, State Historic Preservation Office," (1988).

## **3. Reports**

### **A. Management Summary**

A detailed summary of the investigation shall be submitted to the SHPO and other signatories. The summary report will describe applicable research questions, and field and methods employed to recover pertinent archaeological data. The report will also include detailed site map(s), other photographs/images, and preliminary evaluations of artifacts, documents and other site elements that bear on the assessed significance of the site.

### **B. Detailed Report**

The results of the investigations shall be described in detail in a doctoral dissertation by Mr. Lance Green, a graduate student at the University of North Carolina-Chapel Hill. The student's dissertation prospectus is made a part of this agreement as Appendix A. Should the dissertation not be completed within the schedule under **5.B.2** below, TVA agrees to produce a stand-alone, detailed report on site 31CY293, through a contract with another professional archaeologist. The schedule for that report will be negotiated as amendment to this Agreement.

## **4. Treatment of Human Remains**

If any human remains are discovered during the intentional excavations or are inadvertently discovered during implementation of the Undertaking, such remains will be treated according to provisions of NC General Statute 70, Article 3, the "Unmarked Human Burial and Human Skeletal Remains Protection Act." Since it is assumed that such remains will be associated with modern Cherokee Indians, options for their recovery and treatment may further involve consultation with the Indian tribes participating in this Agreement, and guidance from the EBCI Treatment Guidelines for Human Remains and Funerary Objects (Survey, Excavation, Laboratory/Analysis, and Curation Guidelines)" which are attached to this Agreement as Appendix B.

## **5. Schedule**

### **A. Field Work**

Field work will be initiated the week of October 2, 2005. All field work shall be completed no later than October 15, 2005.

**B. Reports**

1. A detailed management summary shall be submitted to the SHPO (two copies, unbound) and other signatories within thirty (30) days of completion of field work.
2. A detailed report of the investigation will be incorporated into a doctoral dissertation within three (3) years of completion of the fieldwork. Two bound and one unbound copy of the dissertation will be provided to the SHPO, plus one electronic version on CD, complete with all figures, drawings, images, and tables, plus copies of the total artifact catalog for site 31CY293.

**6. Curation**

**A.** TVA agrees to follow federal guidelines (36 CFR 79) for the conservation of all artifacts and associated records generated during data recovery operations at site 31CY293, and will encourage the landowner to deposit or legally donate those items to a university or other curation facility that meets those same federal standards.

**B.** Formal loans of artifact collections and related records should be made to Mr. Lance Green, or other researchers as necessary, to permit preparation of the dissertation or other report as discussed above in 3.B. above.

**C.** Artifacts and records remains the property of the landowner or TVA, respectively, unless other legal arrangements are made per Item 6. A. above.

**7. Administrative Conditions**

**A.** TVA and the other signatories shall review this Agreement one year from the date of ratification to ensure that the terms of the Agreement are being carried out and that the Agreement continues to meet current regulations for Section 106 of the NHPA.

**B.** The signatories to this Agreement may agree to amend the terms of the Agreement. Such amendment shall be effective upon the signatures of all signatories to this Agreement, and the amendment shall be appended to the Agreement as an attachment.

**C.** Should any signatory object within thirty (30) days after receipt of any reports, determinations, findings, plans, specifications, contracts, or other documents provided for review pursuant to this Agreement, TVA shall consult with the objecting party to resolve the objection.

**D.** If any signatory to this Agreement determines that the terms of the Agreement cannot be or are not being carried out, the signatories shall consult to seek an amendment to the Agreement. If the Agreement is not amended, then any signatory may terminate the Agreement. If the Agreement is terminated, TVA shall comply with Section 106 of the NHPA and its implementing regulations at 36 CFR § 800 until such time that TVA enters into a new Agreement.

Execution of this Memorandum of Agreement by TVA, the North Carolina SHPO, and the Applicant and implementation of its terms evidence that TVA has taken into account the effects of the Undertaking on historic properties and TVA has complied with its obligations under Section 106 of the National Historic Preservation Act.

SIGNATORIES:

TENNESSEE VALLEY AUTHORITY

By:\_\_\_\_\_ Date:\_\_\_\_\_  
Kathryn J. Jackson, Executive Vice President, RSO&E

NORTH CAROLINA STATE HISTORIC PRESERVATION OFFICER

By:\_\_\_\_\_ Date:\_\_\_\_\_

THE APPLICANT

By:\_\_\_\_\_ Date:\_\_\_\_\_

CONCURRENCE BY OTHERS

THE EASTERN BAND OF CHEROKEE INDIANS

By:\_\_\_\_\_ Date:\_\_\_\_\_

THE CHEROKEE NATION

By:\_\_\_\_\_ Date:\_\_\_\_\_

THE UNITED KEETOOWAH BAND

By:\_\_\_\_\_ Date:\_\_\_\_\_

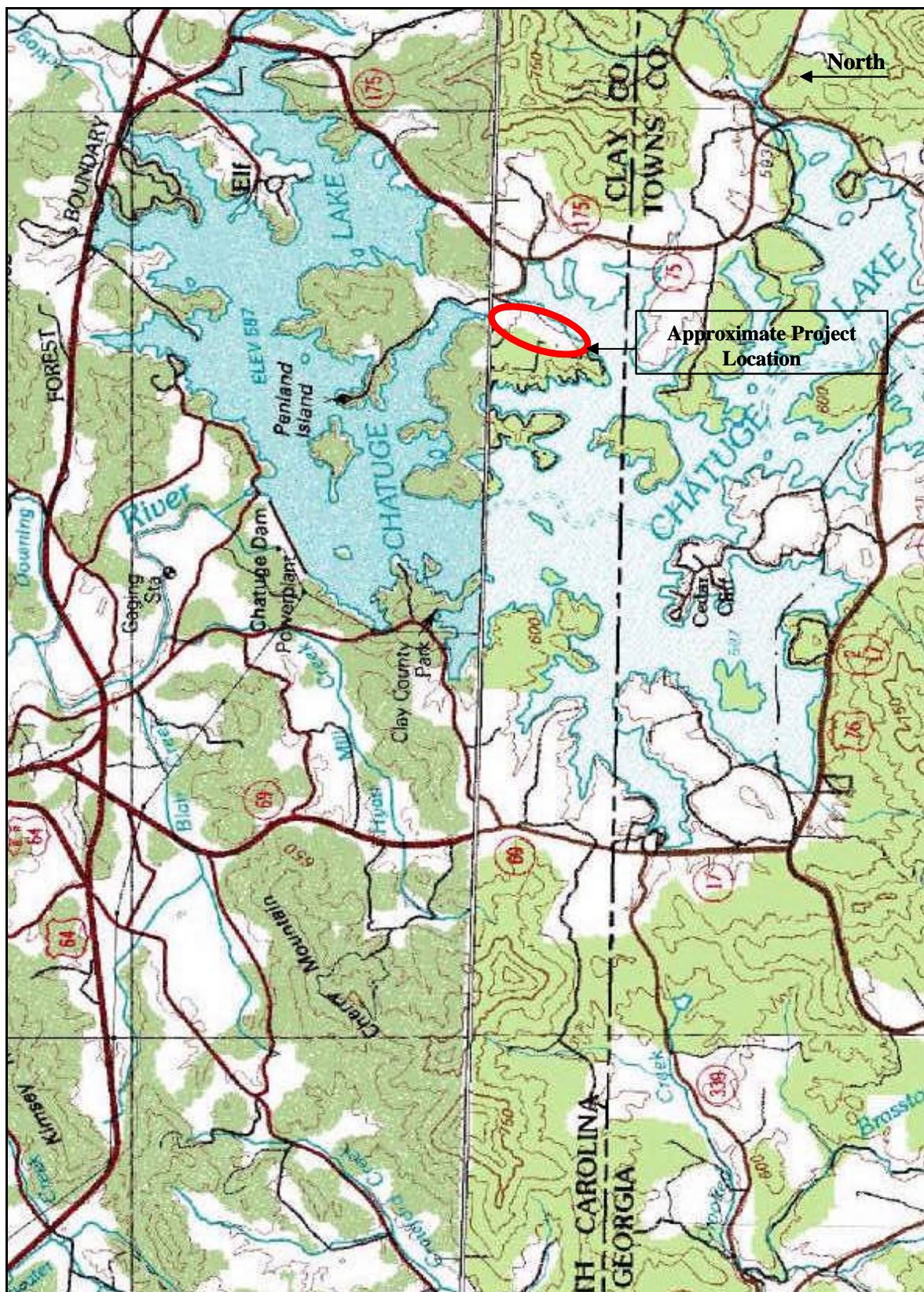


Figure 1. Vicinity Map



Figure 2. Shoreline Fronting McIntosh Subdivision

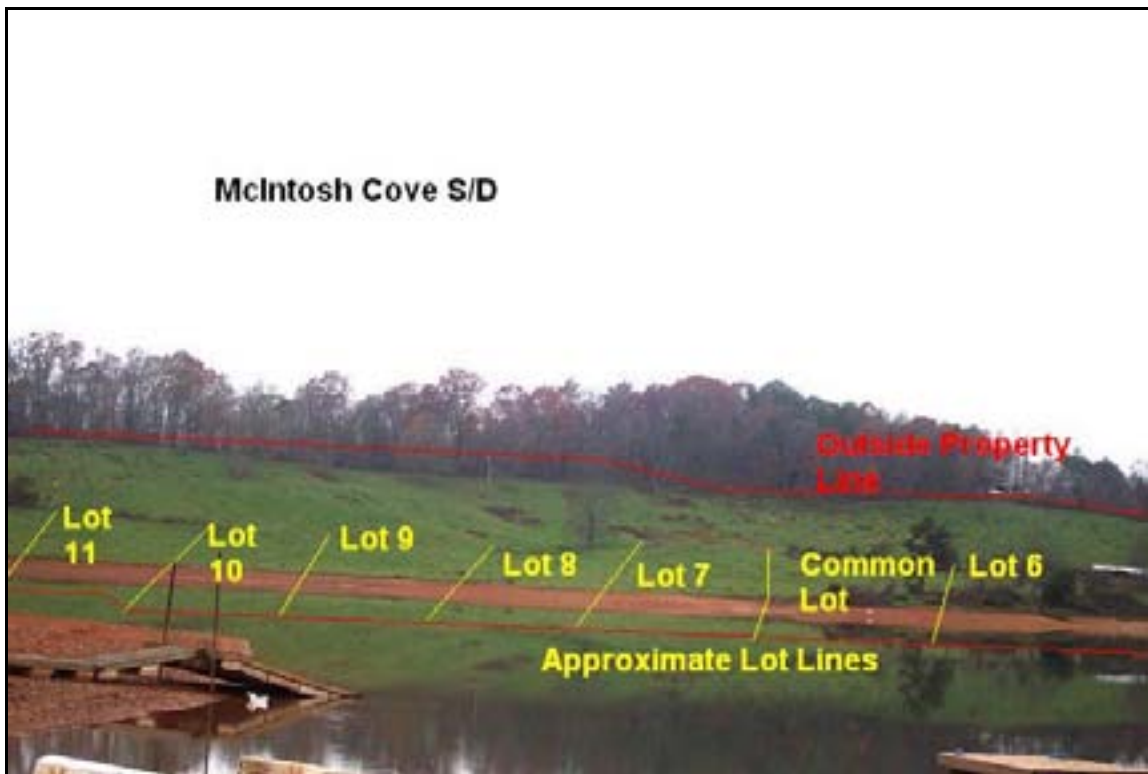


Figure 3. Picture of Portion of Proposed Project

